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Sunset Review
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset
Review of the Antidumping Duty Order on Certain Stilbenic
Optical Brightening Agents from the People's Republic of China
and Taiwan

Summary

We have analyzed the responses of the interested parties in the sunset reviews of the antidumping duty (AD) order on stilbenic optical brightening agents (stilbenic OBAs) from the People's Republic of China (PRC) and Taiwan.¹ In accordance with our analysis of interested parties' substantive responses, we recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. The following is a complete list of issues in these sunset reviews for which we received a substantive response from domestic interested parties only:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the dumping margin likely to prevail

¹ See *Certain Stilbenic Optical Brightening Agents from China*, Case No. A-570-972 – Petitioner's Substantive Response, (May 3, 2017) (Petitioner's Comments - China), and *Certain Stilbenic Optical Brightening Agents from Taiwan*, Case No. A-583-848 – Petitioner's Substantive Response, (May 3, 2017) (Petitioner's Comments - Taiwan).

Background

On April 3, 2017, the Department of Commerce (the Department) published the notice of initiation of the sunset reviews of the AD orders on stilbenic OBAs from the PRC and Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² In this (first) sunset review of the AD order on stilbenic OBAs from the PRC and Taiwan, Archroma, U.S., Inc. (Archroma), the descendant company of the petitioner in the original investigation, submitted an adequate and timely notice of intent to participate within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i),³ as well as a substantive response within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ No respondent interested party submitted a substantive response. Accordingly, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), we conducted an expedited (120-day) sunset review on stilbenic OBAs from the PRC and Taiwan.

History of the Orders

PRC – Investigation/Administrative Reviews

The Department published its Final Determination of Sales at Less than Fair Value (LTFV), as amended, on May 10, 2012.⁵ As a result, the Department calculated the following weighted-average dumping margins:

Zhejiang Hongda Chemicals Co., Ltd	91.78 percent
Zhejiang Transfar Whyyon Chemical Co., Ltd	61.04 percent
PRC-wide Entity	106.17 percent

Following the publication of the Department's final determination,⁶ the International Trade Commission (ITC) found that a U.S. industry was materially injured by reasons of the imports of subject merchandise.⁷ The Department published the AD Order on May 10, 2012.⁸

The Department has conducted no administrative reviews relating to the AD order on stilbenic OBAs from the PRC since the publication of the *PRC Order*.

² See *Initiation of Five-Year (Sunset) Reviews*, 82 FR 16159 (April 3, 2017) (*Sunset Initiation*).

³ See Letter from domestic interested parties regarding “Stilbenic Optical Brightening Agent from Taiwan and China, Notice of Intent to Participate in First Sunset Review of Antidumping Order,” dated April 18, 2017.

⁴ See Petitioner's Comments – China; and Petitioner's Comments - Taiwan.

⁵ See *Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27423 (May 10, 2012) (*PRC Order*).

⁶ See *Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436 (March 26, 2012).

⁷ See *Certain Stilbenic Optical Brightening Agents from China and Taiwan* (Publication 4322) (International Trade Commission May 2012) (*ITC Determination*).

⁸ See *PRC Order*.

Taiwan – Investigation/Administrative Reviews

On May 10, 2012, the Department published an AD order, as amended, on imports of stilbenic OBAs from Taiwan.⁹ As a result of the Department’s Final Determination of Sales at LTFV, the Department calculated the following weighted-average dumping margins:

Teh Fong Min International Co., Ltd	6.19 percent
All Others	6.19 percent

Following the publication of the Department’s final determination,¹⁰ the ITC found that a U.S. industry was materially injured by reasons of the imports of subject merchandise.¹¹ The Department published the AD Order on May 10, 2012.¹²

There have been two completed administrative reviews relating to the AD order on stilbenic OBAs from Taiwan. The Department published the final results of the administrative review covering the period of May 1, 2013 through April 30, 2014 on October 13, 2015.¹³ In that review, the Department assigned the following dumping duty rates:

Teh Fong Min International Co., Ltd	0.00 percent
All Others	6.19 percent

The Department published the final results of the administrative review covering the period of May 1, 2014 through April 30, 2015 on July 7, 2016.¹⁴ In that review, the Department assigned the following dumping duty rates:

Teh Fong Min International Co., Ltd	6.19 percent
All Others	6.19 percent

PRC & Taiwan – Sunset Review

On April 1, 2017, the Department initiated the first sunset reviews of the *Orders* pursuant to section 751(c) of the Act.¹⁵ On August 14, 2015, the Department received a timely notice of intent to participate in the sunset reviews from the domestic interested parties, pursuant to 19 CFR 351.218(d)(1)(i).¹⁶ In accordance with 19 CFR 351.218(d)(1)(ii)(A), the domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers

⁹ See *Certain Stilbenic Optical Brightening Agents from Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27419 (May 10, 2012) (*Taiwan Order*).

¹⁰ See *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012).

¹¹ See *ITC Determination*.

¹² See *Taiwan Order*.

¹³ See *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61368 (October 13, 2015) (*ARI Final Results*).

¹⁴ See *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 43991 (July 7, 2016) (*ARII Final Results*).

¹⁵ See *Initiation of Five-Year (Sunset) Reviews*, 82 FR 16159 (April 3, 2017).

¹⁶ See Letter from domestic interested parties regarding “*Stilbenic Optical Brightening Agent from Taiwan and China*, Notice of Intent to Participate in First Sunset Review of Antidumping Order,” dated April 18, 2017.

of the domestic-like product. The Department did not receive a substantive response from any respondent interested party in the sunset reviews.

Based on the lack of a response from any respondent party, the Department is conducting expedited (120-day) sunset reviews consistent with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).¹⁷ Our analysis of the domestic interested parties' comments submitted in their substantive responses is set forth in the "Analysis" section, *infra*.

Scope Inquiries, Changed Circumstances Reviews, and Duty Absorption

The history of the *Orders* does not include any circumvention or changed circumstances determinations. On September 1, 2015, The Proctor & Gamble Manufacturing Company (P&G), an importer of stilbenic OBAs, requested that the Department determine whether two products were within the scope of the *Order*. The merchandise under consideration was fluorescent brighteners that the Department determined fell outside the scope of the *Order*.¹⁸

Scope of the *Orders*

The scope of the *Order* is as follows:

The stilbenic OBAs covered by this order are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4' -bis [1 ,3,5- triazin-2-yl] amino-2,2' -stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by this order include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from this order are all forms of 4,4' -bis [4-anilino-6-morpholino-I ,3,5-triazin-2-yl] amino-2,2' -stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ (Fluorescent Brightener 71). This order covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTS US), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

¹⁷ See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (noting that the Department normally will conduct an expedited sunset review where respondent interested parties do not provide an adequate response).

¹⁸ See Notice of Scope Rulings, 81 FR 69784 (October 7, 2016).

Discussion of the Issues

Legal Framework

In accordance with section 751(c)(1) of the Act, the Department is conducting these sunset reviews to determine whether revocation of the *Orders* would likely lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the order.

Consistent with guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA);¹⁹ House Report, H. Rep. No. 103-826, pt. 1 (1994) (House Report);²⁰ and Senate Report, S. Rep. No. 103-412 (1994) (Senate Report)), the Department will make its likelihood determination on an order-wide, rather than company-specific, basis.²¹ The Department normally determines that revocation of an AD order is likely to lead to continuation or recurrence of dumping when, among other scenarios: (a) dumping continued at any level above *de minimis* after issuance of the order; (b) imports of the subject merchandise ceased after issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.²² Alternatively, the Department normally will determine that revocation of an AD order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.²³

Further, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Generally, the Department selects the margin(s) from the final determination in the investigation, as this is the only calculated rate that reflects the behavior of exporters without the discipline of an order in place.²⁴ However, in certain circumstances, a more recently calculated rate may be more appropriate (*e.g.*, “if dumping margins have declined over the life of an order and imports have remained steady or increased, {the Department} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review”).²⁵ Finally, pursuant to section 752(c)(4)(A) of the Act, a dumping margin of “zero or *de minimis* shall not by itself

¹⁹ Reprinted at 1994 U.S.C.C.A.N. 4040.

²⁰ Reprinted at 1994 U.S.C.C.A.N. 3773.

²¹ See SAA at 879, and House Report at 56.

²² See SAA at 889-90, House Report at 63-64, and Senate Report at 52.

²³ See SAA at 889-90, and House Report at 63.

²⁴ See SAA at 890; see also *Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

²⁵ See SAA at 890-91.

require” the Department to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at less than fair value.²⁶

In the *Final Modification for Reviews*, the Department announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.²⁷ The Department also noted that “*only in the most extraordinary circumstances* will the Department rely on margins other than those calculated and published in prior determinations.”²⁸ The Department further stated that apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it may also rely on past dumping margins that were not affected by the zeroing methodology, such as dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available, and dumping margins where no offsets were denied because all comparison results were positive.”²⁹

Analysis

Consistent with this framework, we address the following two issues: (1) the likelihood of continuation or recurrence of dumping; and (2) the magnitude of the dumping margin likely to prevail. We address the comments submitted by the domestic interested parties with respect to the antidumping orders covering exports from the PRC and Taiwan, in turn.

1. Likelihood of Continuation or Recurrence of Dumping

Domestic Interested Parties’ Comments

PRC

- Revocation of the AD orders would likely lead to a recurrence of dumping from the PRC, as well as to injury to the domestic OBAs industry.³⁰
- All subject stilbenic OBAs from Chinese producers/exporters are still subject to AD rates that are well above *de minimis*, and that fact alone satisfies the Department’s guidelines and warrants non-revocation of the *Order*.
- Since the investigation, the respondents’ assigned rates remained the same at 91.78 percent and 61.04 percent. During that time frame, the PRC-wide rate has remained at 106.17 percent.³¹

²⁶ See *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007) (*Folding Gift Boxes*) and accompanying Issues and Decision Memorandum at Comment 1.

²⁷ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8109 (February 14, 2012) (*Final Modification for Reviews*).

²⁸ *Id.* (emphasis added); see also 19 CFR 351.218(e)(2).

²⁹ See *Final Modification for Reviews*, 77 FR at 8109.

³⁰ See Petitioner’s Comments – China at 1-2.

³¹ *Id.*, at 4.

- Imports of the subject merchandise have declined since the imposition of the order.³²

Taiwan

- Revocation of the AD orders would likely lead to a recurrence of dumping from Taiwanese producers/exporters, as well as to injury to the domestic OBAs industry.³³
- Stilbenic OBAs from Taiwan are still subject to an AD rate that is well above the *de minimis* level.³⁴
- With the exception of the administrative review covering the period May 1, 2013 through April 30, 2014, the rate for Teh Fong Ming International Co., Ltd. (TFM) has been 6.19 percent. The “all-others” rate has not changed from the order (*i.e.*, 6.19 percent), and thus the Department’s requirement for rates above *de minimis* has been met.³⁵
- Imports of the subject merchandise have declined since the imposition of the order.³⁶

Department Position

As explained in the “Legal Framework” section above, the Department’s determination concerning whether revocation of an AD order would be likely to lead to continuation or recurrence of dumping is based, in part, upon guidance provided by the legislative history accompanying the Uruguay Round Agreements Act (*i.e.*, the SAA; House Report; and Senate Report). Consistent with the SAA and House Report, the Department will make its likelihood determination on an order-wide basis.³⁷ Further, when determining whether revocation of the order would be likely to lead to continuation of dumping, sections 752(c)(1)(A) and (B) of the Act instruct the Department to consider: (1) the weighted-average dumping margins determined in the investigation and subsequent reviews; and (2) the volume of imports of the subject merchandise for the period before and after the issuance of the AD order.

According to the SAA, existence of dumping margins after the order “is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.”³⁸ In addition, “declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes.”³⁹

For the reasons discussed below, we find that revocation of the *Orders* would be likely to result in the continuation or recurrence of dumping in the United States.

³² *Id.*, at 7-8.

³³ See Petitioner’s Comments – Taiwan at 1-2.

³⁴ *Id.*, at 5.

³⁵ *Id.*

³⁶ *Id.*, at 7.

³⁷ See SAA at 879 and House Report at 56.

³⁸ See SAA at 890.

³⁹ *Id.*, at 889.

PRC

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and subsequent reviews. As discussed above and in the *Final Modification for Reviews*, the Department does not rely on weighted-average dumping margins that are calculated using the “zeroing” methodology. This rule change occurred prior to the investigation of stilbenic OBAs from the PRC, thus, no zeroing was used. In the Order, the PRC-wide rate was determined to be 106.17 percent. The separate rate companies received rates of 91.78 and 61.04 percent. These dumping margins remain in place.⁴⁰ As explained by the Department, “existence of dumping margins after the order or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed.”⁴¹ Accordingly, the persistent margins here support our conclusion that dumping would be likely to continue absent an order.

As noted above, pursuant to the SAA, the Department also assesses whether imports of the subject merchandise ceased after issuance of the order to determine whether revocation of the order would be likely to lead to continuation or recurrence of dumping. According to the Petitioner, “{s}ince the 2012 imposition of antidumping duties, Chinese exports of OBA declined significantly and, except for an anomaly for year 2014, have remained at lower levels since the imposition of the order.”⁴²

For our comparison of import volumes, we used the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of an investigation may dampen import volumes and, thus, skew the comparison.⁴³ Accordingly, we compared annual import volumes during the period of May 2010 through April 2011 with the import volume for each annual period following issuance of the antidumping order (*i.e.*, May through April of the following year for the years subsequent to the issuance of the order).⁴⁴ Through this comparison, we observed a decline in the volume of imports of subject merchandise from 1,303,466 kg to 690,129 kg in the annual period following the initiation of the antidumping duty investigation.⁴⁵ In the year following the order, volumes increased from 426,988 kg to 618,311 kg. Import volumes rose the following year (May 2014 – April 2014) to 792,118 kg before decreasing again in the period May 2015 through April 2016 to 399,930 kg.

⁴⁰ No administrative reviews relating to the AD order on Stilbenic OBAs from the PRC were conducted.

⁴¹ See *Policies Regarding the Conduct of Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*; *Policy Bulletin*, 63 FR 18871, 18872 (Department of Commerce April 16, 1998).

⁴² See Petitioner’s Comments – China at 7.

⁴³ See, *e.g.*, *Stainless Steel Bar from Germany*; *Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁴ See Attachment 1.

⁴⁵ For its analysis, the Department relied on import data covering the following HTSUS statistical category 3204.20.8000. While subject merchandise may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090, we have limited the data we rely on to HTSUS statistical category 3204.20.8000 as the other subheadings include merchandise other than stilbenic OBAs.

Regardless of the import volumes, however, dumping margins have persisted at greater than *de minimis* levels since the investigation.⁴⁶

Based on the foregoing, pursuant to section 752(c)(1) of the Act, and consistent with the guidance in the SAA,⁴⁷ we find that dumping would be likely to continue or recur if the order were revoked.

Taiwan

Pursuant to section 752(c)(1)(A) of the Act, the Department first considered the weighted-average dumping margins determined in the investigation and subsequent reviews. As discussed above and in the *Final Modification for Reviews*, the Department does not rely on weighted-average dumping margins that are calculated using the “zeroing” methodology. This rule change occurred prior to the investigation of stilbenic OBAs from Taiwan, thus, no zeroing was used. As noted above, the Department calculated a weighted-average dumping margin of 6.19 percent for TFM – the only individually investigated respondent.⁴⁸ This rate also forms the basis of the rate for all other exporters and producers (*i.e.*, the “All-Others” rate), which was also determined to be 6.19 percent. In the administrative review covering the period May 1, 2013 through April 30, 2014, the Department found that TFM had not sold subject merchandise at less than normal value and subsequently assigned the company a 0.00 percent dumping margin. The “all-others” rate remained at 6.19 percent.⁴⁹ However, in the following administrative review, covering the period May 1, 2014 through April 30, 2015, the Department again assigned TFM a dumping margin of 6.19 percent.⁵⁰ With the exception of the administrative review covering the period May 1, 2013 through April 30, 2014, margins that are greater than *de minimis* have persisted over the course of the subsequent administrative reviews.

As noted above, pursuant to the SAA, the Department also assesses whether imports of the subject merchandise ceased after issuance of the order to determine whether revocation of an AD order would be likely to lead to continuation or recurrence of dumping. Domestic interested parties assert that, “{s}ince the 2012 imposition of antidumping duties, Taiwanese exports of {stilbenic} OBAs as reported by the ITC (DataWeb) declined nearly 18% in the first year, remained at this lower level from 2013 through 2015, and declined 44% in 2016.”⁵¹ Revocation of the order would likely lead to increased imports of the subject stilbenic OBAs from Taiwan at unfairly low prices and cause material injury to the domestic stilbenic OBA industry.⁵²

⁴⁶ Consistent with the Department’s past practice and the guidance set forth in the SAA, provided that dumping has continued above a *de minimis* level, revocation is inappropriate. See SAA, at 890, *see also, e.g., Certain Potassium Phosphate Salts from the People’s Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order*, 80 FR 60122 (October 05, 2015) and accompanying Issues and Decision Memorandum at Issue 1; *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order*, 79 FR 67423 (November 13, 2014), and accompanying Issues and Decision Memorandum at Issue 1.

⁴⁷ See SAA, at 890.

⁴⁸ See *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012) (*Taiwan Final Determination*).

⁴⁹ See *ARI Final Results*.

⁵⁰ See *ARII Final Results*.

⁵¹ See Petitioner’s Comments – Taiwan at 7.

⁵² *Id.*, at 8.

The Department's own examination of import volume data is not consistent with the domestic interested parties' statement in this regard. As stated above, as a base period of import volume comparison, we use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes.⁵³ Accordingly, we compared annual import volumes during the period May 2010 through April 2011 with the import volumes for the annual period following issuance of the antidumping order.⁵⁴ We see a minor decline in the level of imports of subject merchandise from 7,802,478 kg to 7,800,362 kg in the annual period following the initiation of the antidumping duty investigation.⁵⁵ Imports of subject merchandise continued to decrease during the period May 2012 through April 2013 to 6,994,628 kg before decreasing further during the period May 2013 through April 2014 to 6,623,375 kg. For the period May 2014 through April 2015, the level of imports of subject merchandise declined to 6,555,717 kg before declining again to 5,348,437 for the period May 2015 to April 2016.

In sum, import volumes of stilbenic OBAs from Taiwan have fallen every subsequent year during this sunset review period, 2011 through 2016, indicating that companies have continued to dump with the discipline of an order in place. As noted above, the SAA notes that "declining import volumes accompanied by the continued existence of dumping margins after the issuance of the order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes."⁵⁶ The Department finds that the existence of dumping margins, even with an order in place, is highly probative of the likelihood of continuation or recurrence of dumping, if the order were revoked. Accordingly, pursuant to section 752(c)(1) of the Act, the Department determines that dumping would likely continue or recur if the order were revoked.

2. Magnitude of the Dumping Margin Likely to Prevail

Domestic Interested Parties' Comments

PRC

- Section 752(c)(3) of the Act requires the Department to provide the ITC the magnitude of the margin of dumping that is likely to prevail if the order is revoked.⁵⁷ The Policy Bulletin states that the Department normally is to select a margin from the [original] investigation, because that is the only calculated rate that reflects the behavior of exporters . . . without the discipline of an order or suspension agreement in place." Therefore, the rates from the original investigation should be reported by the Department as the likely margin which would result without continuance of the AD order.⁵⁸

⁵³ See, e.g., *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁴ See Attachment 1.

⁵⁵ For its analysis, the Department relied on import data covering the following HTSUS statistical category 3204.20.8000.

⁵⁶ See SAA at 889.

⁵⁷ See Petitioner's Comments – China at 8 (citing 19 U.S.C. § 1675a(c)(3)).

⁵⁸ *Id.*, at 8-9 (citing *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 Fed. Reg. 18871, 18872 (Dep't of Commerce Apr. 16, 1998) (63 Fed. Reg. 18871)).

Taiwan

- The original investigation yielded a margin of 6.19% for TFM and all other manufacturers, producers, or exporters.⁵⁹ Again, while the rate for TFM was adjusted to 0.00% for one POR subsequent to the original investigation, the rate has been 6.19% for all remaining periods. Therefore, the rates from the original investigation should be reported by the Department as the likely margin which would result without continuance of the AD order.

Department Position

Section 752(c)(3) of the Act provides that the Department shall provide to the ITC “the magnitude of the margin of dumping that is likely to prevail if the order is revoked or the suspended investigation is terminated.” Normally, the Department will provide to the ITC weighted-average dumping margins from the investigation.⁶⁰ The Department prefers selecting a rate from the investigation because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order or suspension agreement in place.⁶¹

In non-market economy (NME) cases, for companies not individually investigated and which were not found to be eligible for a separate rate, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the NME-entity rate from the investigation.⁶²

As indicated in the “Legal Framework” section above, the Department’s current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology, consistent with the *Final Modification for Reviews*. Instead, we may rely on other rates that may be available, or we may recalculate weighted-average dumping margins using our current offsetting methodology in extraordinary circumstances.⁶³

PRC

After considering the dumping margins determined in the investigation, and considering that the Department did not conduct subsequent administrative reviews relating to the AD Order on stilbenic OBAs, we find that, as an indication of the magnitude of the margins likely to prevail, it is appropriate to provide the ITC with the margins determined in the LTFV investigation because those margins reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. We further determine that in accordance with the requirements

⁵⁹ See Petitioner’s Comments – Taiwan at 9 (citing *Taiwan Final Determination*).

⁶⁰ See *Eveready Battery Co. v. United States*, 77 F. Supp. 2d 1327, 1333 (CIT 1999).

⁶¹ See SAA at 890; see also, e.g., *Persulfates from the People’s Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁶² See, e.g., *Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 73 FR 39656 (July 10, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁶³ See *Final Modification for Reviews*, 77 FR at 8103.

set forth in the *Final Modification for Reviews* these margins were not affected by the denial of offsets for non-dumped sales, *i.e.*, zeroing, as this order post-dates *Final Modification for Reviews*.⁶⁴

As a result, given the absence of argument and evidence to the contrary, we will report to the ITC the margin of dumping likely to prevail listed in the “Final Results of Review” section below.

Taiwan

After considering the dumping margins determined in the investigation and the subsequent administrative reviews, we find that, as an indication of the magnitude of the margins likely to prevail, it is appropriate to provide the ITC with the margins determined in the LTFV investigation because those margins reflect the behavior of manufacturers, producers, and exporters without the discipline of an order in place. We further determine that in accordance with the requirements set forth in the *Final Modification for Reviews* these margins were not affected by the denial of offsets for non-dumped sales, *i.e.*, zeroing, as this order post-dates *Final Modification for Reviews*.⁶⁵

The Department does not find any indication that the weighted-average dumping margins calculated in subsequent reviews of the Order on stilbenic OBAs from Taiwan better reflect the margin of dumping that is likely to prevail if the Order were revoked, than the rates assigned in the *Taiwan Order*. As a result, given the absence of evidence and argument to the contrary, we will report to the ITC the margin of dumping likely to prevail listed in the “Final Results of Review” section below.

Final Results of Reviews

We determine that revocation of the *Orders* on stilbenic OBAs from the PRC and Taiwan would likely lead to continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail would be weighted-average margins up to 106.17 percent for the PRC and up to 6.19 percent for Taiwan.

⁶⁴ As indicated in the “Legal Framework” portion of this memorandum, the Department’s practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology that was modified in the Final Modification for Reviews. See *Final Modification for Reviews*, 77 FR at 8103.

⁶⁵ *Id.*

Recommendation

Based on our analysis of the substantive responses received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this expedited sunset review in the *Federal Register* and notify the ITC of the Department's determination.

☒

Agree

☐

Disagree

8/1/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Attachment 1

Import Volume Data – Stilbenic OBAs		
	PRC	Taiwan
May 10 - April 11	1,303,466	7,802,478
May 11 - April 12	690,129	7,800,362
May 12 - April 13	426,988	6,994,628
May 13 - April 14	618,311	6,623,375
May 14 - April 15	792,118	6,555,717
May 15 - April 16	399,930	5,348,437

The figures above are based on the following HTSUS category:

3204.20.8000

Source:

Global Trade Atlas, <https://www.gtis.com>